



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Site Remediation and Waste Management Program

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Lt. Governor

CATHERINE R. MCCABE
Commissioner

Angela Carpenter
Acting Director
US EPA Region 2
290 Broadway - 19th floor
New York, New York 10007-1866

Re: Interim Ground Water Standards are Applicable or Relevant and Appropriate Requirements

Dear Ms. Carpenter:

Following up on the September 20, 2018 Quarterly Meeting, this letter is to provide you with the justification for the New Jersey Department of Environmental Protection's (Department's) determination that Interim Specific Ground Water Quality Criteria (Interim Standards), established pursuant to Ground Water Quality Standards at N.J.A.C. 7:9C, are Applicable or Relevant and Appropriate Requirements (ARARs) pursuant to 42 U.S.C. § 9621 (CERCLA 121) and the National Contingency Plan 40 CFR 300 (NCP). Therefore, Interim Standards should be accepted by the United States Environmental Protection Agency (EPA) and applicable at all federal sites in New Jersey.

During previous informal discussions with EPA Region 2 regarding the anticipated promulgation of Interim Standards for 1,4-dioxane, EPA suggested that because such Interim Standards represent numbers that are "interim," by definition they are not permanent standards, and therefore not enforceable. The Department's position is that such Interim Standards are in fact ARARs. The Department's justification is as follows:

1. New Jersey's Remediation Standards at N.J.A.C. 7:26D, at 2.2(a)(1) sets the minimum remediation standards to which ground water shall be remediated pursuant to N.J.A.C. 7:9C-1.7(c) and (d). Interim Standards are incorporated by reference as minimum ground water remediation standards.
2. CERCLA 121, Cleanup Standards, states in paragraph (d)(2)(A)(ii) that "any promulgated standard, requirement, criteria, or limitation under State environmental or facility siting law that is more stringent than any federal Standard... and is identified to the president by the State in a timely manner, is legally applicable to the hazardous substance or pollutant or contaminant concerned..."

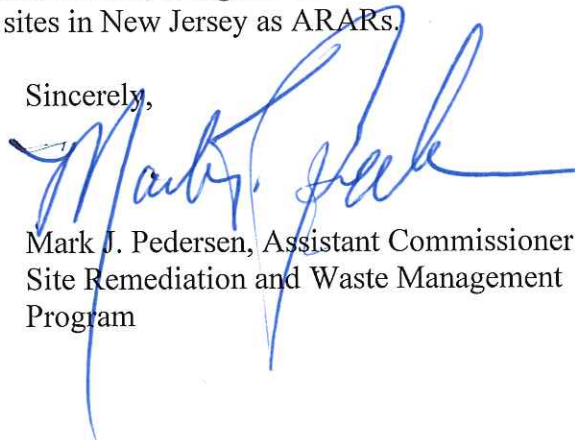
3. The NCP at 40 CFR 300.400 (g)(4) further defines "promulgated" as standards that "are of general applicability and legally enforceable."
4. The Department's position is buttressed by the recent court decision in *Chemistry Council of N.J. v. New Jersey Dep't of Env'tl. Prot.*, No. A-1439-15T4, 2017 N.J. Super. Unpub. LEXIS 3121, at *1 (N.J. Super. Dec. 19, 2017). The Court, although declaring a certain Interim Standard invalid for failure to replace it by rulemaking within a reasonable period (as required by the applicable regulation) pursuant to the New Jersey Administrative Procedures Act (APA), upheld the Department's authority to establish Interim Standards as long as they are replaced with specific criteria as soon as reasonably possible by rule. The decision therefore affirmed that Interim Standards are applicable under state regulation, compliant with the APA, and enforceable.

The Department believes that Interim Standards are generally applicable and legally enforceable because they are:

1. established pursuant to regulations that govern all the ground water in the State;
2. established as interim remediation standards for all contaminated sites in the State, as authorized by regulation, subject only to replacement with specific criteria of a more permanent nature pursuant to rulemaking; and
3. consistent with the definition of an ARAR pursuant to federal law.

The Department respectfully requests that EPA Region 2, upon promulgation by the Department of an Interim Standard more stringent than a Federal Standard, recognize such Interim Standard as legally enforceable and applicable to all federal sites in New Jersey as ARARs.

Sincerely,



Mark J. Pedersen, Assistant Commissioner
Site Remediation and Waste Management
Program

Cc: Catherine R. McCabe, Commissioner, DEP
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